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**IN THE COURT OF APPEAL OF THE STATE OF
CALIFORNIA**

SECOND APPELLATE DISTRICT

DIVISION FOUR

In re Juana F., A Person Coming
Under Juvenile Court Law.

LOS ANGELES COUNTY
DEPARTMENT OF CHILDREN
AND FAMILY SERVICES,

Plaintiff and Respondent,

v.

DANIEL J.,

Defendant and Appellant.

B312782

(Los Angeles County
Super. Ct. No.
21CCJP00790A)

APPEAL from orders of the Superior Court of Los Angeles County, Martha A. Matthews, Judge. Affirmed.

Neale B. Gold, under appointment by the Court of Appeal, for Defendant and Appellant.

Office of the County Counsel, Rodrigo A. Castro-Silva,
County Counsel, Kim Nemoy, Assistant County Counsel,

and Jacklyn K. Louie, Deputy County Counsel, for Plaintiff and Respondent.

INTRODUCTION

The Los Angeles County Department of Children and Family Services (DCFS) filed a petition on behalf of minor Juana F. (then 11 years old) under Welfare and Institutions Code, section 300, subdivision (b)(1) (section 300(b)(1)), alleging that Juana was endangered by her mother's mental and emotional problems.¹ That petition was subsequently amended to add other counts under section 300(b)(1) and section 300, subdivision (a) (section 300(a)), alleging that Juana was physically abused by Mother and endangered by the domestic violence engaged in by Mother and appellant father Daniel J. The court found jurisdiction and removed Juana from both parents under section 361. At the disposition hearing, on the issue of removal, Father's counsel "submitted" without making any arguments or requests.

On appeal, Father contends: (a) substantial evidence did not support the court's order to remove Juana from his custody; (b) the court erred by failing to state that reasonable efforts were made to prevent removal and failing to articulate the facts on which the removal decision was

¹ Undesignated statutory references are to the Welfare and Institutions Code.

based, and these errors were not harmless; and (c) though he did not request the court do so, it should have considered sua sponte whether to place Juana with Father under section 361.2. DCFS disagrees the court committed any reversible error and counters that, by “submitting” on the question of removal during the disposition hearing, Father forfeited all his arguments on appeal.

We conclude: (a) although Father did not forfeit his substantial evidence challenge, the court’s decision was supported by substantial evidence; (b) whether Father forfeited his argument regarding the court’s errors in failing to articulate adequate findings, the errors were harmless; and (c) Father forfeited his argument that the court should have considered placing Juana with him pursuant to section 361.2, but in any case, that argument fails. We therefore affirm.

STATEMENT OF RELEVANT FACTS

A. DCFS Investigates a Referral

Appellant Daniel J. is the father of Juana F. (born December 2009). Non-party D.J. is her mother. In January 2021, DCFS received a referral that Mother had been placed on a psychiatric hold for being a danger to herself and others. A maternal cousin had contacted the Department of Mental Health because Mother expressed thoughts of killing herself and 11-year-old Juana.

A children's social worker (CSW) spoke with Mother, who stated her suicidal ideation was related to the domestic violence she experienced with Father. Mother reported that in October 2020, Father was arrested in Florida due to a domestic violence incident and was now awaiting deportation to Guatemala. The parents ended their relationship, and Mother and Juana moved to Los Angeles. Mother stated that after Father's arrest, she began to receive threatening phone calls from him, blaming her for his predicament. However, in Father's last phone call, he apologized and asked to reconcile; Mother refused. Mother felt depressed and had thoughts of harming Juana and killing herself by throwing herself under a train or a trailer. Instead, she wound a cord around her own neck and applied pressure. She was thereafter hospitalized on a 72-hour "psychiatric hold." The court issued a removal order, and Juana was detained with a maternal aunt.

B. *DCFS Files a Petition and Continues to Investigate*

In mid-February 2021, DCFS filed a petition under section 300(b)(1) on behalf of Juana, with a single count (count b-1) alleging that Mother had mental and emotional problems, including suicidal ideation, depression, and thoughts of harming Juana, rendering her incapable of providing regular care for the child. The court found a prima facie case, and ordered Juana remain detained.

In March 2021, a dependency investigator (DI) interviewed Juana. Juana said that she and Mother had moved to Florida when she was eight to be with Father. Juana reported her parents fought a lot, and sometimes Father would hit Mother. She recounted a specific incident in which Father angrily pushed Mother into a pot of boiling water, burning her back. Juana explained that her parents cycled between fighting and reconciling. Juana stated she and Mother had to move in with her maternal aunt in Florida because Father had threatened to kill Mother if she left. Father then came to the aunt's house looking for them, and the police arrested him.² When asked whether she wanted to return to Father, Juana stated she loved him, but did not know if she wanted to return to him; she said she wanted to stay with her aunt. Juana also informed the DI that, on an almost daily basis, Mother would hit her arms, feet, and back with a belt, but Father would "get in the middle" and protect her. Mother also pulled her ears sometimes. Juana denied that Father ever hit or threatened her.

The DI interviewed Mother, who admitted she had thought of killing herself and of hurting Juana. She

² The police report states that when the police arrived, Mother claimed that three days before, Father had gotten angry over her perceived lack of attention to him and grabbed her shirt with his hands, causing the collar to squeeze her throat. Father admitted the incident, but claimed he was only trying to scare her.

explained that in mid-January, Father called her while he was incarcerated and told her “something was going to happen” to her if she did not return to him. This caused her to go to her sister’s house, take a cord, wrap it around her neck, and pull. Mother stated she was then hospitalized and given some medication; she was now seeing a therapist. She expressed a desire to have Juana returned to her. As for Father, after stating she did not “think” or “plan” to return to him, Mother said, “but . . . I don’t know.” She said that when she was with him in Florida, Father would hit and threaten to kill her. Juana was present during these incidents but did not intervene. Mother admitted to hitting Juana with a belt as a form of discipline, though she denied this occurred daily; Father did not hit Juana. One week later, Mother informed the DI that Father had called her and stated he would be fighting for Juana, as Mother intended to do. She then asked the DI: “[I]f one day we fix our situation, can I return with him?”

The DI telephonically interviewed Father. He admitted he and Mother argued, but claimed “in front of God[,] I never hit her[,] but if she says that I hit her[,] then ok[ay]. We argued[,] yes[,] but normally I never made her bleed.” When asked about the incident Juana described of his pushing Mother into a pot of boiling water, Father claimed he had brought home a vegetable he asked Mother to cook, and when it accidentally fell into the boiling water, Mother was burned. He also claimed that when he threatened to kill Mother, he was really “trying to say please

forgive me” and “get her scared.” He admitted Juana had witnessed some of the altercations. He also claimed he tried to stop Mother from physically abusing Juana.

The DI spoke with other relatives. Mother’s sister-in-law opined that Mother had plans to return to Father, and had not done so only because Juana had been detained. The maternal aunt confirmed that, due to Father’s warning that something would happen to Mother if she did not return to him, Mother had been intending to return to him when she wrapped the phone cord around her neck.

C. DCFS Files an Amended Petition

In April 2021, DCFS amended its petition to add counts under section 300(a) and section 300(b)(1). Along with count b-1 alleging Mother’s mental health issues endangered Juana, counts a-1 and b-2 identically alleged that the parents had a history of engaging in domestic violence in Juana’s presence, noting that Father was arrested for domestic battery in Florida in October 2020. Counts a-2 and b-3 identically alleged Mother physically abused Juana by striking her arms, feet, and back with a belt, and pulling on her ears. Both parents entered a general denial. Father submitted the issue of detention to the court but requested the child protection agency in Florida assess his home “in regards to possible release at the dispositional hearing.” The court ordered DCFS to work with its Florida counterpart to request a courtesy home assessment for Father. DCFS made several attempts to

contact its Florida counterpart, leaving several voicemail messages requesting a callback, but as of the adjudication and disposition hearings, it had not received any.

D. *Adjudication and Disposition*

In May 2021, the court held the adjudication hearing. No witnesses testified. Juana’s counsel asked the court to dismiss counts a-1 and a-2, but sustain counts b-1, b-2, and b-3 because DCFS had met its burden as to those counts.³ The court indicated that was its intention but asked the other counsel to argue. After DCFS’s counsel argued that DCFS had met its burden on both counts a-1 and a-2, the court indicated it still intended to dismiss count a-1 but would sustain the other counts. Mother’s counsel argued the court should dismiss the petition as to her because Mother denied hitting Juana with a belt or any other object, and her suicidal episode was a one-time event. Counsel further

³ Though both counts a-1 and b-2 identically alleged that the parents’ domestic violence endangered Juana, count a-1 was alleged under section 300(a) (alleging Juana suffered or was at substantial risk of suffering “serious physical harm inflicted nonaccidentally upon the child by the child’s parent or guardian”), while count b-2 was alleged under section 300(b)(1) (alleging Juana suffered or was at substantial risk of suffering “serious physical harm . . . , as a result of the failure or inability of the child’s parent . . . to adequately supervise or protect the child . . .”). Count b-1 alleged that Mother’s mental health issues endangered Juana. Counts a-2 and b-3 (brought under section 300(a) and section 300(b)(1), respectively) identically alleged that Mother had physically abused Juana by striking her with a belt.

argued there was no risk of harm from the parents' domestic violence as they lived on opposite sides of the country and did not intend to reconcile. Father's counsel joined this argument, also noting that although Father was arrested for battery, he had yet to be convicted, and that he had voluntarily committed to enrolling in a domestic violence class.

The court dismissed count a-1, finding no evidence that Juana was put directly at risk by her parents' domestic violence. The court sustained counts a-2 and b-3, noting the evidence that Juana was struck almost daily with an object, and Mother's expressed desire to hurt the girl. The court sustained count b-1, finding it clear that Mother had ongoing mental health issues that could endanger Juana if not properly addressed. Finally, the court sustained count b-2, stating: "I think this is serious domestic violence with some fairly high risk factors, threats to kill, choking, an incident involving pushing the mother into a hot stove." The court noted that "[a]lthough the most recent incident was in October . . . the fact that there haven't been more recent incidents may partly be explained by the fact that the father was arrested in Florida and remained detained for some period of time in that case. I do think that there is a current risk of harm if the parties do not effectively address the issues. [¶] In fact, when Mother was interviewed for the case, she said that she wanted to get back together with the father if the situation can be fixed, so I am going to sustain the b-2 count as well."

Proceeding to disposition, Juana’s counsel agreed with DCFS’s request to remove the child from both parents, noting that Juana had expressed a desire to stay with her aunt. Both Mother’s counsel and Father’s counsel submitted (i.e., made no arguments or requests) on the question of removal, and the court ordered Juana removed from both parents, without finding that DCFS had expended reasonable efforts to prevent removal, or articulating its basis for ordering the removal. Father timely appealed.⁴

DISCUSSION

“On appeal, the ‘substantial evidence’ test is the appropriate standard of review for both the jurisdictional and dispositional findings.” (*In re J.K.* (2009) 174 Cal.App.4th 1426, 1433.) Under a substantial evidence review, “we view the record in the light most favorable to the juvenile court’s determinations, drawing all reasonable inferences from the evidence to support the juvenile court’s

⁴ Father’s notice of appeal states he is appealing “All findings and orders made on the May 17th Adjudication Hearing.” The disposition hearing occurred immediately after the adjudication hearing, and while Father’s brief challenges only the court’s dispositional order, we construe the notice of appeal as a challenge to both the jurisdictional and dispositional orders. Because Father’s brief assigns no error to the court’s jurisdictional order, we deem any challenge thereto forfeited, and address only the dispositional order in this opinion. (*Allen v. City of Sacramento* (2015) 234 Cal.App.4th 41, 52 [“We are not required to examine undeveloped claims or to supply arguments for the litigants”].)

findings and orders. Issues of fact and credibility are the province of the juvenile court and we neither reweigh the evidence nor exercise our independent judgment.” (*In re Joaquin C.* (2017) 15 Cal.App.5th 537, 560.) “Evidence from a single witness, even a party, can be sufficient to support the trial court’s findings.” (*In re Alexis E.* (2009) 171 Cal.App.4th 438, 451.)

A. *Substantial Evidence Supported the Court’s Removal of Juana*

Father acknowledged engaging in domestic violence directed toward Mother in Juana’s presence. Juana told DCFS she saw Father hit Mother on several occasions and once saw him push her into a pot of boiling water. Nevertheless, Father argues that Juana was not at risk from him because he loved her, because he had never struck her, and because he was living in Florida and he and Mother were no longer in a relationship.⁵ We disagree.

It is well established that a child need not be the one abused to be at risk from domestic violence. “Domestic violence impacts children even if they are not the ones being physically abused, ‘because they see and hear the violence and the screaming.’” (*In re T.V.* (2013) 217 Cal.App.4th 126,

⁵ DCFS contends that because Father’s counsel “submitted” on the issue of removal, he has forfeited this challenge, but “a claim that the evidence is insufficient to support a disposition order in a dependency matter generally is not forfeited even if not raised below.” (*In re J.N.* (2021) 62 Cal.App.5th 767, 777, fn. 5.)

134.) In *In re Heather A.* (1996) 52 Cal.App.4th 183, our colleagues in Division Three found that five incidents of domestic violence occurring in the same house as the children warranted jurisdiction under section 300(b)(1) because “domestic violence in the same household where children are living *is* neglect; it is a failure to protect [the children] from the substantial risk of encountering the violence and suffering serious physical harm or illness from it. Such neglect *causes* the risk.” (*In re Heather A.*, *supra*, at 194.) Our colleagues in Division Five concluded that when four incidents of domestic violence occurred in the presence of a minor, “the juvenile court assuredly had before it sufficient evidence to establish Mother was unable to provide proper care for [the minor] and [the minor] would potentially suffer detriment if she remained in Mother’s custody.” (*In re F.S.* (2016) 243 Cal.App.4th 799, 812.) Here, not only did the acts of domestic violence occur in the same house, but all parties admit that many occurred in Juana’s presence. Therefore, substantial evidence supported finding Juana was at risk from her parents’ domestic violence.

Comparing himself to the father in *In re I.R.* (2021) 61 Cal.App.5th 510, Father argues any risk to Juana had abated by the time of the disposition hearing because he was “not involved in ongoing domestic violence as he lives in a different state from the mother and they are no longer together.” In *I.R.*, there was evidence that the father slapped the mother at least twice, including once in the presence of their 20-month-old daughter. (*Id.* at 512-514.)

Though the father expressed remorse for his actions, the court found jurisdiction over his daughter and removed her from him. (*Id.* at 513, 519.) The appellate court reversed, finding the record lacked substantial evidence that the child would be in substantial danger in the father's care. (*Ibid.*) The court held that the two incidents in which the father was found to have slapped the mother did not "support a reasonable inference that he is a generally violent or abusive person," and therefore the propriety of the court's removal depended on "whether the record contains substantial evidence that the domestic violence between Mother and Father is likely to continue if [the child] is placed in Father's care." (*Id.* at 521.) The court concluded no such evidence existed, as the father and mother were no longer in a relationship and were living apart. (*Ibid.*)

Unlike the record in *In re I.R.*, the record here contains substantial evidence that the domestic violence between Mother and Father was likely to continue. Though he was not living with Mother, Father had asked her to reconcile, and Mother had shown a willingness to do so, asking DCFS whether it would be permissible for her to return to Father "if one day we fix our situation." Several relatives had also opined that Mother intended to return to Father. And unlike the father in *I.R.* who admitted and expressed remorse over slapping the mother, here, Father denied and minimized his violence toward Mother, claiming "in front of God," that he never hit her, stating that at least he had never "made her bleed," explaining that Mother's burns from

boiling water resulted not from his pushing her (as Juana attested) but from an accidentally dropped vegetable, and rationalizing his death threats to Mother as “trying to say please forgive me.” *In re I.R.* is thus inapposite, and substantial evidence supports a conclusion that the domestic violence between Mother and Father would continue.⁶

B. *The Court Committed Harmless Error When It Failed to Articulate That Reasonable Efforts Were Made to Prevent Removal, or State the Basis for Removal*

When removing a child under section 361, “[t]he court shall make a determination as to whether reasonable efforts were made to prevent or to eliminate the need for removal of the minor from his or her home” and also “shall state the facts on which the decision to remove the minor is based.” (§ 361, subd. (e).) Though the juvenile court articulated neither here, Father concedes that “the failure to do so will be deemed harmless where ‘it is not reasonably probable such finding, if made, would have been in favor of continued parental custody.’” (*In re Jason L.* (1990) 222 Cal.App.3d 1206, 1218.) Father contends the errors here were not harmless because, had the court articulated its reasoning for

⁶ Father also contends the court erred because the record contained evidence that could support a conclusion that Juana would not be at risk in his custody. We reject Father’s request to reweigh the evidence. (See *In re Joaquin C.*, *supra*, 15 Cal.App.5th at 560.)

removing Juana, or stated it found that reasonable efforts had been made to prevent removal, it “would have recognized insufficient evidence supported a removal order” and “there is a reasonable chance it would have found reasonable alternatives to removal of the child from Father.” We reject Father’s argument.⁷

When the court took jurisdiction, it opined: “I think this is serious domestic violence with some fairly high risk factors, threats to kill, choking, an incident involving pushing the mother into a hot stove.” It noted that though the most recent incident occurred in October 2020, “the fact that there haven’t been more recent incidents may partly be explained by the fact that the father was arrested in Florida and remained detained for some period of time in that case. I do think that there is a current risk of harm if the parties do not effectively address the issues.” The court additionally pointed out that “when Mother was interviewed for the case, she said that she wanted to get back together with the father if the situation can be fixed.”

Father does not dispute the court made these findings at the jurisdictional hearing; instead, he argues that “the burden to establish legal removal is much higher than to establish juvenile court jurisdiction” and therefore we “cannot be assured that any evidence presented would support the clear and convincing standard needed for

⁷ Because we find the court’s errors harmless, we need not address DCFS’s contention that Father forfeited this argument on appeal.

removal.” However, none of the facts supporting the court’s jurisdictional findings were in controversy. In his opening brief, Father acknowledges he was “domestically violent towards Mother,” and does not dispute that Juana was present when at least some of the violence occurred. Nor does he dispute that he had asked Mother to reconcile, that while Mother had initially refused, she had asked DCFS whether it would be permissible for her to do so, and that relatives thought Mother intended to reconcile with Father. On this record, despite the higher standard of proof required to remove a child from her parent, we find it is not reasonably probable that if the juvenile court had stated the requisite findings on the record, it would have done anything but repeat the findings it made when asserting jurisdiction.

Nor do we find it reasonably probable the court would have found an alternative to removal. Father contends the court should have considered whether to place Juana with his relatives until the court deemed him a fit parent. Setting aside that no one requested the court to do so, there is no evidence in the record that there were any suitable paternal relatives willing to care for Juana.⁸ Moreover, the record shows that DCFS’s Florida counterpart failed to return multiple calls from DCFS; on such a record, the juvenile

⁸ Thus, Father’s citation to *In re Isayah C.* (2004) 118 Cal.App.4th 684 is inapposite. There, the evidence showed that not only had the father requested his child be placed with his relatives, the child protection agency had interviewed those relatives and deemed them “very appropriate.” (*Id.* at 690.)

court could have had no comfort that there would be any oversight of Juana's care were she placed with Father's Florida relatives. Accordingly, we find harmless the court's failure to find that reasonable efforts were made to prevent removal, or to articulate the reasons for removal.

C. *Father Has Forfeited His Section 361.2 Argument*

Section 361.2, subdivision (a) provides: "If a court orders removal of a child pursuant to Section 361, the court shall first determine whether there is a parent of the child, with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300, who desires to assume custody of the child. If that parent requests custody, the court shall place the child with the parent unless it finds that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child." (§ 361.2, subd. (a).) Father contends that because Juana had been removed under section 361 and he was living in Florida at the time of the disposition orders, the court was required to consider placing her with him under section 361.2.

Father has forfeited this argument. Although he acknowledges his failure to raise this issue below, he urges us to exercise our discretion to consider this issue. We see no reason to do so. (See, e.g., *In re Lorenzo C.* (1997) 54 Cal.App.4th 1330, 1338 ["a parent's failure to object or raise

certain issues in the juvenile court prevents the parent from presenting the issue to the appellate court”].)

Further, were we to consider Father’s argument, we would reject it. First, Father misreads the statute. Section 361.2 applies only if “there is a parent of the child, *with whom the child was not residing at the time that the events or conditions arose that brought the child within the provisions of Section 300*, who desires to assume custody of the child.” (§ 361.2, subd. (a), italics added.) At the time of some of the events that brought Juana within the provisions of section 300 -- specifically, those relating to Father’s domestic violence -- he and Juana were living together in Florida.

Second, even assuming the court should have considered placing Juana with Father under section 361.2, in removing Juana from Father, the court necessarily found “there would be a substantial danger to the physical health, safety, protection, or physical or emotional well-being of the child for the parent . . . to live with the child or otherwise exercise the parent’s . . . right to physical custody, and there are no reasonable means by which the child’s physical and emotional health can be protected without removing the child from the child’s parent’s . . . physical custody.” (§ 361, subd. (d).) Section 361.2 precluded Juana from being placed with Father if the court found “that placement with that parent would be detrimental to the safety, protection, or physical or emotional well-being of the child.” (§ 361.2, subd. (a).) We find that had the court considered placing Juana with Father under section 361.2, there is no reasonable

possibility it would have done anything other than find such placement to have been detrimental to Juana.

DISPOSITION

The court's orders are affirmed.

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MANELLA, P. J.

We concur:

WILLHITE, J.

CURREY, J.